



NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; System of Records

AGENCY: National Labor Relations Board.

ACTION: Notice; new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the National Labor Relations Board (“NLRB” or “Agency”) proposes to issue a National Labor Relations Board system of records notice titled, “Backpay Management System” (NLRB-36). The Agency is authorized by the National Labor Relations Act to remedy unfair labor practices by issuing a backpay remedy to an individual, called a “discriminatee,” for a monetary loss that results from an unfair labor practice. A charged party that owes backpay is generally referred to as a “respondent.” The Agency uses the Backpay Management System (BMS) to record received funds from respondents, to effectuate disbursements of backpay and certain related tax forms to discriminatees, and to facilitate providing certain tax forms, tax reports, and tax payments to the Internal Revenue Service (IRS) and the Social Security Administration. This system notice will be included in the Agency inventory of record systems. All persons are advised that, in the absence of submitted comments considered by the Agency as warranting modification of the notice as here proposed, it is the intention of the Agency that the notice shall be effective upon expiration of the comment period without further action.

DATES: Written comments on the system's routine uses must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. This system will be effective upon publication. The routine uses in this action will become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] unless written comments are received that require a contrary determination.

ADDRESSES: All persons who desire to submit written comments for consideration by the

Agency in connection with this proposed notice of the system of records shall mail them to the Agency's Senior Agency Official for Privacy, National Labor Relations Board, 1015 Half Street SE, Third Floor, Washington, DC 20570-0001, or submit them electronically to privacy@nrlb.gov. Comments may also be submitted electronically through <http://www.regulations.gov>, which contains a copy of this proposed notice.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: NLRB's Privacy Officer, Office of the Chief Information Officer, National Labor Relations Board, 1015 Half Street SE, Third Floor, Washington, DC 20570-0001, (202) 273-3733, or privacy@nrlb.gov.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(r), the NLRB has provided a report of this system of records to Congress and to the Office of Management and Budget.

SYSTEM NAME AND NUMBER: NLRB-36, Backpay Management System.

SECURITY CLASSIFICATION: None of the records in this system are classified.

SYSTEM LOCATION: Records are maintained at the National Labor Relations Board Headquarters in Washington, DC and in NLRB field locations, which are available at <https://www.nrlb.gov>, and in electronic databases.

SYSTEM MANAGER(S): Associate Chief Financial Officer, Finance, Office of the Chief Financial Officer, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: 44 U.S.C. 3101; 5 U.S.C. 552a(e)(10); 29 U.S.C. 160(c); 29 CFR 101.16; E.O. 9397 (8 FR 16094, Nov. 30, 1943), as amended by E.O. 13478 (73 FR 70239, Nov. 20, 2008), relating to federal use of Social Security Numbers.

PURPOSE(S) OF THE SYSTEM: The purpose of the Backpay Management System (BMS) is to enable the Agency to record funds received from respondents and to effectuate disbursements

of backpay and issuance of certain tax forms to discriminatees. The Agency uses the BMS to create disbursement files that are transmitted to the Department of the Treasury for the issuance of payment to discriminatees. The system also facilitates the efforts and responsibility of the Agency to send certain tax forms, tax reports, and tax payments to the Internal Revenue Service (IRS) and the Social Security Administration. The system also generates reports that are used to support and verify the activities being processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: The system covers individuals who are “discriminatees,” to whom the Agency is issuing a backpay remedy for a monetary loss as part of an unfair labor practice case under the National Labor Relations Act. The system also covers sole proprietor respondents.

CATEGORIES OF RECORDS IN THE SYSTEM: Records in the system may include the following types of information about individuals:

- For each discriminatee: name; Social Security number; mailing address; home phone number; cell phone number; email address; work phone number; work email address; Taxpayer Identification Number (TIN); date of death if applicable; bank name, address, and routing information; payment amount (including wages, interest and dues); related tax information; information about the discriminatee’s employer; and heir relationship (which may include name and contact information about the discriminatee’s potential heirs for purposes of disbursing backpay funds to them as appropriate in the event of a discriminatee’s death).
- For sole proprietor respondents: business name; Employer Identification Number (EIN); business address; business phone; business fax; and name of business’s main person to contact for communications.

RECORD SOURCE CATEGORIES: The record source categories may include: the Agency’s electronic case management system (NxGen); information submitted by discriminatees; information submitted by discriminatees’ employers; information submitted by unions and law

firms representing discriminatees; disbursement requests uploaded by Agency regional compliance officers; and payment processing data from the Treasury Department, which is manually entered into the BMS by the Agency's Office of the Chief Financial Officer as a result of a payment returned to the Agency primarily due to incorrect banking information, invalid address, or uncashed check after one year.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND PURPOSES OF SUCH USES: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside the NLRB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of the Treasury for issuance of payment to discriminatees.
2. To the IRS and the Social Security Administration for tax reporting purposes as part of the NLRB's processing of backpay payments to discriminatees.
3. To the Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, or (c) the United States Government is a party to litigation or has an interest in such litigation, and the Agency determines that the records are both relevant and necessary to the litigation.
4. To a court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, or (c) the United States Government is a party to litigation or has an interest in such litigation, and the Agency determines that the records are both relevant and necessary to the litigation.
5. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. However, the investigative file, or parts thereof, will only be

released to a Congressional office if the Agency receives a signed statement under 28 U.S.C. 1746 from the subject of the investigation.

6. To the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.
7. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.
8. To appropriate agencies, entities, and persons when:
 - a. The National Labor Relations Board determines that the use of information from this system of records is reasonably necessary and otherwise compatible with the purpose of collection to assist another federal recipient agency or entity in (a) responding to a suspected or confirmed breach of private information, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security resulting from a suspected or confirmed breach; or
 - b. The National Labor Relations Board suspects or has confirmed there has been a breach of this system of records; and (a) the NLRB has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the NLRB (including its information systems, programs, and operations), the Federal Government, or national security; and (b) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NLRB's

efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for NLRB, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the NLRB employees.
10. To an appropriate federal, state, tribal, or local law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.
11. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or pursuant to the order of a court of competent jurisdiction.
12. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.
13. To the news media and the public, with the approval of the Senior Agency Official for Privacy in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of the NLRB, or when disclosure is necessary to demonstrate the accountability

of the NLRB's employees or individuals covered by the system, except to the extent the Senior Agency Official for Privacy determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: Records are maintained in electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: Records may be retrieved by individual name or other personal identifier listed in "Categories of Records," when applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and disposed of in accordance with the NLRB's Request for Records Disposition Authority, Records Schedule Number DAA-0025-2017-0001, under the Back Pay Administration disposition (Disposition Authority Number DM-0025-2017-0001-0006), approved by NARA on April 9, 2018.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: Access to this application is controlled by administrators who determine users' authorized access based on each user's office and position within the office.

RECORD ACCESS PROCEDURES: An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager at the address above, in accordance with the procedures set forth in 29 CFR 102.119(b) and (c).

An individual requesting access in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to such access, such as a government-issued photo ID. Individuals requesting access via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES: An individual may request amendment of a

record pertaining to such individual maintained in this system by directing a request to the System Manager at the address above, in accordance with the procedures set forth in 29 CFR 102.119(d).

An individual seeking to contest records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to contest such records, such as a government-issued photo ID. Individuals seeking to contest records via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete.

NOTIFICATION PROCEDURES: An individual may inquire as to whether this system contains a record pertaining to such individual by sending a request in writing, signed, to the System Manager at the address above, in accordance with the procedures set forth in 29 CFR 102.119(a).

An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to such notification, such as a government-issued photo ID. Individuals requesting notification via mail must furnish, at minimum, name, date of birth, and home address in order to establish identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: None.

HISTORY: None.

Dated: January 28, 2022.

Roxanne L. Rothschild,
Executive Secretary,
National Labor Relations Board.